unreasonable search and seizure

9-11 minutes

An unreasonable search and seizure is a search and seizure executed 1) without a legal search warrant signed by a judge or magistrate describing the place, person, or things to be searched or seized or 2) without probable cause to believe that certain person, specified place or automobile has criminal evidence or 3) extending the authorized scope of search and seizure.

An unreasonable search and seizure is unconstitutional, as it is in violation of the Fourth Amendment, which aims to protect individuals' reasonable expectation of privacy against government officers. The Fourth Amendment reads: "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrant shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Remedies

The remedy to unreasonable search and seizure is the exclusionary rule, which prevents the evidence obtained via the unreasonable search or seizure from being introduced in court, as it is referred to as the fruit of the poisonous tree; see *Mapp v. Ohio, 347 U.S. 643 (1961)*. This remedy only applies to criminal trials. For 1) other court proceedings, including "federal habeas corpus review of state convictions, grand jury proceedings, preliminary hearings, bail hearings, sentencing hearings, and proceedings to revoke parole," 2) impeachment of evidence against the defendant, and 3) civil proceedings, this remedy does not apply. For instance, the defendant cannot ask the evidence obtained via lineups and photographic identifications (showing photos of possible suspects in a one-on-one situation to the victim or witness to identify) to be excluded.

Qualified Immunity

Even though the defendant can get evidence excluded, they cannot get a remedy against the government officials who performed unreasonable search or seizure, for the officer has qualified immunity, which is a doctrine that protects government employees when they perform certain actions pertinent to their occupations. A police officer with qualified immunity is protected from being personally sued by the defendant.

Because of qualified immunity, the exclusionary rule is often a defendant's only remedy when police officers conduct an unreasonable search or violate the defendant's rights. Qualified immunity usually will extend to officers who violate a defendant's constitutional or statutory rights.

Under qualified immunity, an officer can only be sued when no reasonable officer would believe that the officers' conduct was legal. This exception comes from both *Graham v. Connor, 490 U.S. 386 (1989)* - stating an objective standard for reasonableness which "must be judged from the perspective of a reasonable officer on the scene" - and Justice Ginsburg's concurrence in *Saucier v. Katz, 533 U.S. 194 (2001)* - stating that "an officer whose conduct is objectively unreasonable under Graham should find no shelter under a sequential qualified immunity test." This rule is to protect government employees executing their working assignments from being personally sued by the defendant.

There are exceptions of search and seizure without a warrant and the exception of good faith, which permit a search or seizure even if it doesn't conform to the requirement of the Fourth amendment.

Exceptions to Warrantless Searches

Evidence obtained without a valid warrant should be excluded due to unreasonable search and seizure. The Supreme Court in *Katz v. United States, 389 U.S. 347 (1967)* held that "searches conducted outside the judicial process, without prior approval are prohibited under the Fourth Amendment, with a few detailed exceptions."

The following are exceptions that permit warrantless search:

Plain view doctrine:

- Private view: If an officer is lawfully on the premises or stops the vehicle for a lawful purpose, and “the incriminating character of the item is immediately apparent,” the officers can seize that in plain view, even if it is not on the list of the search warrant. If the officer; see *Horton v. California, 496 U.S. 128 (1990)*.
- Public view: Since individuals have no reasonable expectation of privacy in things exposed to the public, items in public view may be seized without a warrant.

Exigent circumstances:

- Officers will take immediate action to secure the place and make time to get a warrant or they may search warrantless, if they believe that failing to do so will cause the destruction of evidence, threaten public safety, or cause a suspect to flee; see *Illinois v. McArthur, 531 U.S. 326 (2001)*.
    - If the exigency is caused by officers, the search violates the 4th Amendment; see *Kentucky v. King, 563 U.S. 131 (2011)*.
- Hot pursuit: Officers can arrest and search individuals who are suspected of fleeing after committing a felony. For the pursuit, officers can enter any property to search and/or seize evidence without warrants.
    - If the crime is not a felony, the exception cannot be applied; see *Welsh v. Wisconsin, 466 U.S. 740 (1984)*.
- Emergency situations may be applied to avoid the destruction of evidence, protect officers or the public, or inhibit suspects from fleeing. Whether or not an emergency exists is determined objectively from the officer's judgment.

Automobiles: If the officer has probable cause to believe that an automobile contains evidence of a crime or contraband, officers may be able to search automobiles, including the trunk and luggage, or other containers which may *reasonably* contain evidence or contraband. See *Caroll v. United States, 267 U.S. 132 (1925)*.

Consent: A third party with possessory rights to the property may have authority to voluntarily consent to a search.

- Voluntary: If the consent was given under threats, then it’s invalid.
- To determine whether the consent was valid, courts may evaluate the circumstances when consent was made. For instance, if the officer acquired the consent because they erroneously stated that they have a warrant, the consent given in reliance on that statement does not constitute consent. See *Bumper v. North Carolina, 391 U.S. 543, 549 (1968)*. While failing to disclose the right to withhold consent will not cause the consent invalid. See *Schneckloth v. Bustamonte, 412 U.S. 218, 233 (1973)*.
- Authority: The property should be legally owned, occupied or jointly controlled by the third party. See *Frazier v. Cupp, 394 U.S. 731, 740 (1969)*.
- Scope: Usually it’s limited to the consent, but sometimes may extend to reasonable areas. See *Florida v. Jimeno, 500 U.S. 248, 252 (1991)*.

Administrative search: An administrative search is different from a criminal search, which aims to search evidence of a regulatory violation or for public interest. See *Camara v. Mun. Court of San Francisco, 387 U.S. 523, 533 (1967)*. There are some administrative searches that do not require warrants: like vehicle checkpoints and roadblocks, factory or inventory searches, the detention of a traveler, residential institutions, cause of fire searches, and so on.

Stop and frisk: If officers have reasonable suspicion that a crime is occurring, they can stop a suspect for weapons to ensure their safety.

Arrest

A search incident leading to an arrest may not require a warrant if the officer just searches a suspect’s immediate surroundings to prevent destruction of evidence or secure safety of themselves or nearby people. See *Warden v. Hayden, 387 US. 294 (1967)*.

- Legitimacy: The arrest must be lawful and officers must have reasonable belief the automobile contains evidence of the offense of arrest. If the search precedes the arrest, it’s illegal.
- Time & area: The search must be contemporaneous in time and place with the arrest.
- Scope: The person and their "wingspan" (arm's reach) no matter if it's an open or closed space, locked or unlocked items.
- Exceptions: Need exigent circumstances or a search warrant to search the contents of a cell phone.

Exception of Good Faith

For a government officer who has a search or seizure warrant that turns out to be invalid, if they objectively and reasonably rely on the warrant and execute search or seizure pursuant to the warrant, evidence seized via their search or seizure may not be excluded. See *United States v. Leon, 468 U.S. 897 (1984)*.

The prerequisite to the good faith exception is that the governmental officer didn't have any improper action during search or seizure. The reason is that the Fourth amendment is mainly designed to deter police officers' misconduct, and punishing the officer for the magistrate for the judge's error cannot contribute to the deterrence of Fourth Amendment violations. For instance, the judge made mistakes when they signed a search warrant because the defendant's name is the same as the other person who is initially to be searched, but the police executed the search according to the warrant and found criminal evidence, then this evidence may not be excluded, as the police acted in good faith.

See: Fourth Amendment, 18 U.S. Code Chapter 205 - Searches and Seizures

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